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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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<i>In re:</i>	:	Chapter 11
	:	
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,	:	
	:	Case No. 18-23538 (RDD)
	:	(Jointly Administered)
	:	
Debtors.	:	
	:	
	:	
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**OBJECTION OF VORNADO REALTY L.P. AND CERTAIN OF ITS WHOLLY-
OWNED AND CONTROLLED SUBSIDIARIES, AS LANDLORD, TO
DEBTORS' NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN
CONNECTION WITH GLOBAL SALE TRANSACTION**

Vornado Realty L.P., and its wholly-owned and controlled subsidiaries, 770 Broadway Owner LLC and One Penn Plaza LLC ("Landlord"), by and through its counsel, Fried, Frank, Harris, Shriver & Jacobson, LLP, hereby submits this limited objection ("Objection") to the Debtors' Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts

and Unexpired Leases in Connection with Global Sale Transaction [Docket No. 1731] (the “Assignment and Assumption Notice”)¹, and respectfully represents as follows:

BACKGROUND

1. On October 15, 2018 (the “Petition Date”), Sears Holding Corporation and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (“Bankruptcy Court”). The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On November 19, 2018, the Bankruptcy Court entered that certain *Order Approving Global Bidding Procedures and Granting Related Relief* [Docket. No 816] (the “Global Bidding Procedures Order”) approving the global bidding and sale procedures in connection with the sale or disposition of substantially all of the Debtors’ assets, among other relief.

3. Landlord is a party to two (2) lease agreements with certain of the Debtors for nonresidential real property.

4. First, pursuant to that certain lease agreement between Kmart Corporation and 770 Broadway Owner LLC, as successor landlord, dated August 3, 1995 (as amended, together with any and all other agreements affecting the subject premises) (the “770 Broadway Lease”), 770 Broadway Owner LLC leases certain non-residential real property for the premises located at 770 Broadway, New York, NY 10003. The 770 Broadway Lease is identified as Store Number

¹ Capitalized terms used but not defined herein shall the respective meanings ascribed to such terms in the Assignment and Assumption Notice.

7777 in the Assignment and Assumption Notice.

5. Second, pursuant to that certain lease agreement between Kmart Corporation and One Penn Plaza LLC, as successor landlord, dated November 23, 1994 (as amended, together with any and all other agreements affecting the subject premises) (the “One Penn Plaza Lease”, together with the 770 Broadway Lease, the “Leases” and each, a “Lease”), One Penn Plaza LLC leases certain non-residential real property for the premises located at 250 W 34th Street, New York, NY 10119. The One Penn Plaza Lease is identified as Store Number 7749 in the Assignment and Assumption Notice.

6. Pursuant to the Global Bidding Procedures, on January 18, 2019, the Debtors filed the Assignment and Assumption Notice, which, among other things, listed all of the contracts and leases that potentially could be assumed by the Debtors and assigned to the Successful Bidder in connection with the Global Sale Transaction. The Assignment and Assumption Notice, among other things, listed the Debtors’ calculation of the pre-petition cure amounts with respect to certain of those contracts and leases.

7. The Assignment and Assumption Notice states that (i) the proposed pre-petition cure amount for the 770 Broadway Lease is \$9,557 (the “Proposed 770 Broadway Cure Amount”) and (ii) the proposed pre-petition cure amount for the One Penn Plaza Lease is \$3,558 (the “Proposed One Penn Plaza Cure Amount, together with the 770 Broadway Cure Amount, the “Proposed Cure Amounts”). Based on information and belief, the Proposed Cure Amounts reflect the Debtors’ calculation with respect to pre-petition amounts due under the Leases.

8. According to the Assignment and Assumption Notice, the Cure Objection Deadline and Adequate Assurance Deadline is 4:00 p.m. (ET) on January 26, 2019. However, on January 24, 2019, the Debtors, through their counsel, extended the Cure Objection Deadline and

Adequate Assurance Deadline for Landlord up and until January 28, 2019.

OBJECTION

(I) The Proposed Cure Amounts are Incorrect and Landlord is Entitled to the Actual Cure Amounts due under each Lease

9. The Proposed Cure Amounts listed in the Assignment and Assumption Notice are wrong and do not accurately reflect cure costs that must be paid pursuant to the terms of each Lease in order to cure any defaults. Prior to the assumption of any of the Leases, the Debtors are required, pursuant to section 365(b)(1) of the Bankruptcy Code, to cure, or provide adequate assurance that the Debtors will promptly cure, all outstanding defaults under the Lease. 11 U.S.C. § 365(b)(1). The Proposed Cure Amounts asserted by the Debtors are inaccurate and fail to include various pre-petition and post-petition charges due under each Lease, including, but not limited to, (i) real estate taxes, (ii) base rent, (iii) miscellaneous expenses, (iv) accrued interest and (v) attorneys' fees.

10. A review of the books and records of Landlord with respect to the 770 Broadway Lease reveals an aggregate actual cure amount of not less than \$1,612,961 as of January 28, 2019 (the "Actual 770 Broadway Cure Amount"), as set forth in the chart attached hereto as Exhibit A. Additional supporting documentation for the Actual 770 Broadway Cure Amount was provided to Debtors' counsel. As set forth on Exhibit A, the outstanding pre-petition amounts owed to Landlord under the 770 Broadway Lease is equal to \$550,181. Also as set forth on Exhibit A, in addition to outstanding pre-petition amounts due, to date, the Debtors have failed to pay post-petition amounts due, and the Actual 770 Broadway Cure Amount reflects these amounts. Pursuant to section 365(d)(3) of the Bankruptcy Code, the Debtors are obligated to timely perform all post-petition obligations under the 770 Broadway Lease. Accordingly, Landlord reserves all rights to assert additional amounts due at the time of, or prior to, assumption and

assignment of the 770 Broadway Lease.

11. A review of the books and records of Landlord with respect to the One Penn Plaza Lease reveals an aggregate actual cure amount of not less than \$1,148,809 as of January 28, 2019 (the “Actual One Penn Plaza Cure Amount”, together with the Actual 770 Broadway Cure Amount, the “Actual Cure Amounts”), as set forth in the chart attached hereto as Exhibit B. Additional supporting documentation for the Actual One Penn Plaza Cure Amount was provided to Debtors’ counsel. As set forth on Exhibit B, the outstanding pre-petition amounts owed to Landlord under the One Penn Plaza Lease is equal to \$150,105. Also as set forth on Exhibit B, in addition to outstanding pre-petition amounts due, to date, the Debtors have failed to pay post-petition amounts due, and the Actual One Penn Plaza Cure Amount reflects these amounts. Pursuant to section 365(d)(3) of the Bankruptcy Code, the Debtors are obligated to timely perform all post-petition obligations under the One Penn Plaza Lease. The Debtors have failed to do so and the Proposed Cure Amounts need to be modified to include both pre-petition and post-petition outstanding and unpaid rent and other charges due the under the Leases. Further, Landlord reserves all rights to assert additional amounts due at the time of, or prior to, assumption and assignment of the One Penn Plaza Lease.

12. As a result of quarterly and/or year-end adjustments as provided for in the Leases, additional amounts may be due and owing by the Debtors. In addition, pursuant to section 16.01 of the One Penn Plaza Lease and section 23(F) of the 770 Broadway Lease, the Debtors are required to pay to Landlord reasonable attorneys’ fees incurred in connection with enforcing the terms of each Lease. Accordingly, Landlord is entitled to reasonable attorneys’ fees and costs incurred in enforcing its rights under the Leases.

13. For the foregoing reasons, Landlord objects to the Proposed Cure Amounts and

requests that the Debtors modify the Proposed Cure Amounts in respect of each Lease to reflect the Actual Cure Amounts, including both pre-petition and post-petition amounts due and any and all additional amounts due under each Lease on account of interest, costs, expenses or fees. Further, Landlord reserves the right to amend this Objection or assert additional objections in order to reflect any additional amounts that are outstanding or become outstanding under any of the Leases, prior to the assumption and assignment of any Lease, including any and all additional post-petition administrative expenses that accrue, but remain unpaid, prior to the assumption and assignment of any Lease.

(II) The Debtors Failed to Provide Adequate Assurance of Future Performance

14. Pursuant to sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code, a debtor is required to provide “adequate assurance of future performance” with respect to its leases. The debtor bears the burden of persuasion that the requirements for assumption under section 365 have been met. See In re M. Fine Lumber Co., Inc., 383 B.R. 565, 573 (Bankr. E.D.N.Y. 2008); In re Embers 86th Street, Inc., 184 B.R. 892, 902 (Bankr. S.D.N.Y. 1995). In assessing adequate assurance of future performance, “the test is not one of guaranty, but simply whether it appears that the rent will be paid and other obligations met.” In re Embers, 184 B.R. at 902 (citing In re THW Enterprises, Inc., 89 B.R. 351, 357 (Bankr. S.D.N.Y. 1988)). In performing this analysis, courts “look for evidence of profitability...a plan that would earmark money exclusively for the landlord...or the willingness of debtor or debtor’s assignee to fund the cure payments.” In re Embers, 184 B.R. at 902.

15. At this time, the Debtors have failed under sections 365(b)(1)(C) and 365(f)(2) of the Bankruptcy Code to provide Landlord with any form of “adequate assurance of future performance” under the Leases. Therefore, Landlord objects to any proposed assignment and

assumption of the Leases until the Debtor satisfies its obligations under the Bankruptcy Code, and delivers to Landlord, evidence of adequate assurance of future performance, in a form and manner reasonably satisfactory to Landlord.

16. Landlord acknowledges that, at some point subsequent to the filing of this Objection, the Debtors may provide evidence of adequate assurance of future performance under the Leases in order to satisfy its obligations under sections 365(b)(1)(C) and 365(f)(2) of the Bankruptcy Code. Accordingly, Landlord further reserves its right to object to the form and manner of any adequate assurance of future performance that the Debtors may deliver in connection with the proposed assignment and assumption of the Leases.

17. Further, the Asset Purchase Agreement provides that the Successful Bidder may designate the assumption and assignment of a lease to a third party. To the extent a lease is so designated, the identity of any potential assignee is unknown until such designation. Until the identity of a potential assignee for any of the Leases is known, it is impossible to determine whether Landlord will receive adequate assurance of future performance under any of the Leases. Thus, Landlord objects to the Successful Bidder's designation of any of the Leases, until the identity of the proposed assignee is known, and Landlord has had sufficient time to assess the proposed assumption and assignment and review adequate assurance of future performance of the proposed assignee.

JOINDER AND RESERVATION OF RIGHTS

18. Landlord joins in any other objections filed by the Debtors' landlords to the Global Sale Transaction to the extent such objections are not inconsistent with this Objection.

19. Landlord reserves its right to supplement this Objection and make such other and further objections as it deems necessary and appropriate. Landlord also reserves all rights to object to any proposed assumption and assignment of the Leases on any ground.

[Remainder of page left intentionally blank]

WHEREFORE, Landlord enters this Objection to the Assignment and Assumption Notice and requests that the Bankruptcy Court enter an Order for such relief as the Bankruptcy Court deems just and proper.

Dated: New York, New York
January 28, 2019

Respectfully submitted,

FRIED, FRANK, HARRIS, SHRIVER
& JACOBSON LLP

By: /s/ Jennifer L. Rodburg

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EXHIBIT A

Actual 770 Broadway Cure Amount

770 Broadway

Pre-Petition Expenses

Description	Time Period	Invoice Date	Invoice #	\$ Amt
Cash on Account		03/17/2015		(312)
Water	02/01/2017-03/01/2017	03/21/2017	30117	257
Cash on Account		10/23/2017		(2,000)
Real Estate Tax Adj.	7/1/2017-12/31/2017	11/22/2017	6591	(8,109)
Water	10/01/2017-11/01/2017	12/18/2017	110117	886
Water	11/01/2017-12/01/2017	12/18/2017	120117	206
Water	12/01/2017-01/01/2018	01/09/2018	10118	239
Real Estate Tax Escalation	12/8/17-12/31/17	01/10/2018	12618	68,774
Real Estate Tax Adj.	07/01/17-12/07/17	01/10/2018	12619	(158,954)
Base Rent Credit	12/01/17-12/31/17	01/11/2018		(106,228)
Base Rent Credit	12/01/17-12/31/17	01/11/2018		(317,126)
Water	01/01/2018-02/01/2018	02/13/2018	20108	287
Trash	02/19/2018	02/19/2018	109447	1,600
Sales Tax	02/19/2018	02/19/2018	109447	142
Water	02/01/2018-03/01/2018	03/13/2018	30118	169
Water	03/01/2018-04/01/2018	04/13/2018	40118	142
Steam	12/01/2017-01/01/2018	04/19/2018	10118	7,107
Sales Tax	12/01/2017-01/01/2018	04/19/2018	10118	631
Steam	01/01/2018-02/01/2018	04/19/2018	20118	13,122
Sales Tax	01/01/2018-02/01/2018	04/19/2018	20118	1,165
Steam	03/01/2018-04/01/2018	04/19/2018	40118	6,100
Sales Tax	03/01/2018-04/01/2018	04/19/2018	40118	541
Steam	02/01/2018-03/01/2018	04/19/2018	180301	7,343
Sales Tax	02/01/2018-03/01/2018	04/19/2018	180301	652
Steam	04/01/2018-05/01/2018	05/01/2018	50118	1,575
Sales Tax	04/01/2018-05/01/2018	05/01/2018	50118	140
Water	04/01/2018-05/01/2018	05/17/2018	180501	265
Water	05/01/2018-06/01/2018	06/13/2018	60118	662
Water	06/01/2018-07/01/2018	07/19/2018	70118	1,213
Water	07/01/2018-08/01/2018	08/17/2018	80118	1,278
Water	08/01/2018-09/01/2018	09/12/2018	90118	1,627
Water	09/01/2018-10/01/2018	10/10/2018	100118	1,324
Water*	10/01/2018-11/01/2018	11/13/2018	110118	727
Real Estate Tax Escalation	12/08/17-12/31/17	01/10/2018	12620	90,179
Base Rent	01/01/18-01/31/18	01/11/2018		179,739
Base Rent	12/01/17-12/31/17	01/11/2018		139,153
Base Rent	02/01/18-2/28/18	02/01/2018		179,739
Credit On Account	02/05/2018	02/05/2018		(53,643)
Trash	05/28/2018	05/28/2018	110156	1,600
Sales Tax	05/28/2018	05/28/2018	110156	142
Tenant Improvement Overage	06/04/2018	06/04/2018	110177	60,443
Real Estate Tax Escalation*	07/01/2018-12/31/2018	07/01/2018	324654	731,740
Vault Tax*	07/01/18-06/30/19	08/07/2018	70118	27,804
Trash	08/27/2018	08/27/2018	110613	871
Bounce Fee	10/23/2018	10/23/2018		25
Bounce Fee	10/26/2018	10/26/2018		25
Prepaid Rent	03/01/2018	03/01/2018	19009	(2,762)
Subtotal				880,503

Adustments for Pre- & Post-Petition Expenses

(Less) 7/1/2018-12/31/2018 Real Estate Tax Bill	(731,740)
(Plus) Adjusted charge for pre-petition period (7/1/18 - 10/14/18)	421,546
(Less) 10/1/2018-11/01/2018 Water Bill	(727)
(Plus) Adjusted charge for pre-petition period (10/1/2018 - 10/14/18)	328
(Less) 7/1/2018-6/30/2019 Vault Tax Bill	(27,804)
(Plus) Adjusted charge for pre-petition period (7/1/18-10/14/18)	8,075
Total Pre-Petition Unpaid	550,181

770 Broadway

Post-Petition Expenses

Description	Time Period	Invoice Date	Invoice #	\$ Amt
Water	11/01/2018-12/01/2018	12/12/2018	120118	288
Water	12/01/2018-01/01/2019	01/19/2019	10119	430
Real Estate Tax Escalation	01/01/2019-6/30/2019	01/01/2019	350603	731,740
Subtotal				732,458

Adustments for Pre- & Post-Petition Expenses

(Plus) Adjusted charge for post-petition period (10/15/18-12/31/18)	310,194
(Plus) Adjusted charge for post-petition period (10/15/18-11/01/18)	399
(Plus) Adjusted charge for post-petition period (10/15/18-06/30/19)	19,729
Total Post-Petition Unpaid	1,062,780
Total 770 Broadway Unpaid	1,612,961

EXHIBIT B

Actual One Penn Plaza Cure Amount

250 W 34th Street (One Penn)

Pre-Petition Expenses

Description	Time Period	Invoice Date	Invoice #	\$ Amt
Cash On Account	9/20/2016	09/20/2016		(231)
Submetered Electric	07/16/2018-08/14/2018	09/18/2018	81418	45,842
Sales Tax	07/16/2018-08/14/2018	09/18/2018	81418	4,068
Submetered Electric	08/14/2018-09/13/2018	10/10/2018	91318	46,798
Sales Tax	08/14/2018-09/13/2018	10/10/2018	91318	4,153
Professional Fees	10/26/2018	10/26/2018	133553	3,057
Bounce Fee	10/26/2018	10/26/2018	342770	25
Submetered Electric	09/13/2018-10/15/2018	11/13/2018	101518	42,610
Sales Tax	09/13/2018-10/15/2018	11/13/2018	101518	3,782
Total Pre-Petition Unpaid				150,105

250 W 34th Street (One Penn)

Post-Petition Expenses

Description	Time Period	Invoice Date	Invoice #	\$ Amt
Real Estate Tax Escalation	01/01/2019-06/30/2019	01/01/2019	349967	924,689
Submetered Electric	10/15/2018-11/13/2018	01/09/2019	111318	32,241
Sales Tax	10/15/2018-11/13/2018	01/09/2019	111318	2,861
Submetered Electric	11/13/2018-12/14/2018	01/18/2019	121418	34,466
Sales Tax	11/13/2018-12/14/2018	01/18/2019	121418	3,059
Total Post-Petition Unpaid				997,317
Interest Accrued on Unpaid Expenses**				1,386
Total 250 W 34th Street Unpaid				1,148,809